

THE HONORABLE \_\_\_\_\_

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

COLUMBIA SPORTSWEAR NORTH  
AMERICA, INC., an Oregon corporation,

Plaintiff,

v.

SEIRUS INNOVATIVE ACCESSORIES,  
INC., a Utah corporation,

Defendant.

Case No. 2:13-cv-2175

COMPLAINT FOR PATENT  
INFRINGEMENT

DEMAND FOR JURY TRIAL

**COMPLAINT**

Plaintiff, Columbia Sportswear North America, Inc. (“Columbia Sportswear”) brings this Complaint for patent infringement against Defendant Seirus Innovative Accessories, Inc. (“Seirus”), and alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for patent infringement arising under the patent laws of the United States, including 35 U.S.C. § 271, §§ 281-285 and § 289.

2. This lawsuit pertains to the Defendant’s infringement of Plaintiff’s U.S. Patent No. D657,093 (the ‘093 Patent’).

3. Columbia Sportswear seeks injunctive relief and damages against Defendant.

COMPLAINT FOR PATENT INFRINGEMENT - 1  
No.2:13-cv-2175

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**THE PARTIES**

4. Plaintiff Columbia Sportswear North America, Inc. is a corporation organized and existing under the laws of the State of Oregon, with its principal place of business located in Portland, Oregon. Columbia Sportswear North America, Inc. is the owner of all of Columbia Sportswear's North American intellectual property. Columbia Sportswear is a leading innovator in the global outdoor apparel, footwear, accessories and equipment markets. Founded in 1938, Columbia Sportswear apparel, footwear, accessories and equipment have earned a reputation for innovation, quality and performance, serving the needs of outdoor enthusiasts in more than 100 countries.

5. Upon information and belief, Defendant Seirus Innovative Accessories, Inc. is a Utah corporation having a principal place of business located in Poway, California. On information and belief, Defendant Seirus manufactures and sells gloves and other sportswear accessories. Defendant Seirus has qualified to do business in the state of Washington where it sells sportswear products through approved retailers.

**JURISDICTION AND VENUE**

6. Columbia Sportswear's cause of action for patent infringement against Seirus arises under the patent laws of the United States, 35 U.S.C. § 101 *et seq.*, including §§ 271, 281-85 and 289. This Court has original jurisdiction over this subject matter pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. This Court has personal jurisdiction over Seirus because it is a corporation qualified to and doing business under the laws of the State of Washington. Furthermore, this Court has jurisdiction over Seirus because it has infringed the '093 Patent in this district by selling products for resale to consumers by retail stores, including in Everett, Washington, and/or by inducing retailers to sell its infringing products in this district. Upon information and belief, Seirus also offers or has offered the infringing products for sale through advertising materials circulated to potential customers in this district and maintains an

Internet site available to consumers within this district on which it advertises its products and hosts a search function whereby users can enter a city or zip code in order to search for local retail stores where Seirus products are sold.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) & (c) and 1400(b). Upon information and belief, Seirus has committed acts of infringement in this district by selling and offering to sell products that infringe the '093 Patent within this judicial district.

### **FACTUAL BACKGROUND**

9. Columbia Sportswear North America, Inc. owns all right, title, and interest in U.S. Patent No. D657,093 (the '093 Patent") entitled "HEAT REFLECTIVE MATERIAL", which was duly and legally issued to Columbia Sportswear by the United States Patent and Trademark Office on April 3, 2012. The '093 Patent has a single claim that covers the ornamental design for the heat reflective material as shown and described in the figures incorporated into the '093 patent. Figures 1 and 2 of the '093 patent, which show an elevational view and enlarged view of the heat reflecting material, are shown below:

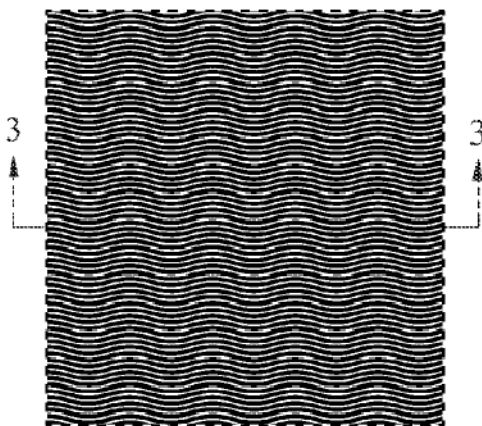


FIG. 1

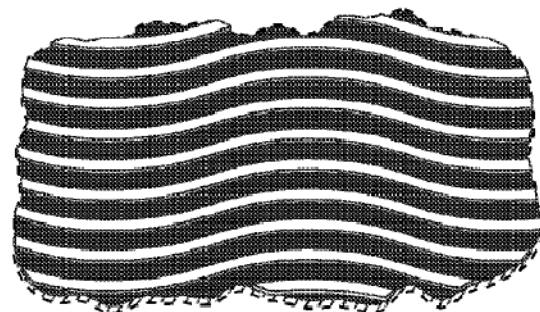


FIG. 2

Figure 8 of the '093 patent shows the heat reflective material as used in handwear:

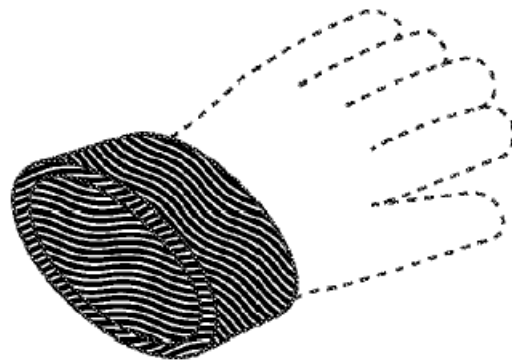


FIG. 8

10. Defendant Seirus sells gloves under the trade name HEATWAVE that incorporate a lining with reflective material as shown below:





11. Columbia, suspecting the Seirus HEATWAVE fabric infringed its '093 patent, purchased a pair of gloves for study from the Sound Safety Products store in Everett, Washington. The HEATWAVE fabric infringes the '093 Patent.

**COUNT I –  
INFRINGEMENT OF UNITED STATES  
PATENT D657, 093**

12. Columbia Sportswear restates and realleges each of the allegations, photographs and figures of paragraphs 1-11 as if fully set forth herein.

13. Seirus has been, and presently is, infringing the '093 Patent within this judicial district by manufacturing or importing into, using, selling and/or offering for sale handwear that embody the patented invention disclosed in the '093 Patent, in violation of 35 U.S.C. §§ 271 and 289.

14. Seirus is not licensed or otherwise authorized by Columbia Sportswear to

1 make, use, import, sell, or offer to sell any product with heat reflective material whose design  
2 is covered by the '093 Patent and its conduct is, in every instance, without Columbia  
3 Sportswear's consent.

4 15. The design of Seirus' HEATWAVE fabric so closely resembles the invention  
5 disclosed in the '093 Patent that an ordinary observer would be deceived into purchasing  
6 Seirus' HEATWAVE handwear in the mistaken belief that it includes the invention disclosed  
7 in the '093 Patent. Seirus will continue to manufacture and sell its HEATWAVE handwear  
8 unless enjoined by this Court.

9 16. Due to Seirus' infringement of the '093 Patent, Columbia Sportswear is  
10 entitled to recover from Seirus damages adequate to compensate for the infringement in an  
11 amount subject to proof at trial, but in no event less than a reasonable royalty, together with  
12 interest and costs as fixed by this Court under 35 U.S.C. § 284. As an additional remedy for  
13 Seirus' infringement of the '093 Patent, Columbia Sportswear is entitled to recover Seirus'  
14 total profits from the sale of its HEATWAVE handwear, but not less than \$250 for each  
15 article of manufacture or any colorable imitation thereof to which Seirus applied the patented  
16 design or which Seirus sold or exposed for sale and to which such design or colorable  
17 imitation has been applied, under 35 U.S.C. § 289.

18 17. Due to Seirus' infringement of the '093 Patent, Columbia Sportswear has  
19 suffered, is suffering, and will continue to suffer irreparable injury and damage for which  
20 Columbia Sportswear has no adequate remedy at law. Columbia Sportswear is therefore  
21 entitled to a permanent injunction against Seirus' further infringing conduct.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Columbia Sportswear respectfully requests that the Court enter  
24 judgment in its favor against Defendant Seirus, granting the following relief:

25 A. A declaration that the '093 Patent is valid and enforceable;

26 B. A judgment and declaration that Seirus has infringed the '093 Patent

1 literally and/or under the doctrine of equivalents;

2 C. A grant of permanent injunction pursuant to 35 U.S.C. § 283, enjoining  
3 Seirus and its agents, servants, officers, directors, employees, affiliated entities and all  
4 persons in active concern or participation with them from continued infringement of the  
5 '093 Patent;

6 D. An award of damages adequate to compensate Columbia Sportswear for  
7 Seirus' infringement of the '093 Patent, but in no event less than a reasonable royalty for the  
8 use made of the invention disclosed in the '093 Patent by Seirus, together with interest and  
9 costs as fixed by the Court, pursuant to 35 U.S.C. § 284;

10 E. An award to Columbia Sportswear equal to Seirus' total profits from the  
11 sale of its HEATWAVE handwear, but not less than \$250 for each article of manufacture or  
12 any colorable imitation thereof to which Seirus applied the patented design or which Seirus  
13 sold or exposed for sale and to which such design or colorable imitation has been applied,  
14 pursuant to 35 U.S.C. § 289;

15 F. An award of attorneys' fees pursuant to 35 U.S.C. § 285; and

16 G. Such other relief as this Court deems to be just and equitable.

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**DEMAND FOR JURY TRIAL**

Pursuant to Fed. R. Civ. P. 38(b), Columbia Sportswear respectfully requests a trial by jury of all issues so triable.

Dated this 4th day of December, 2013.

SCHWABE, WILLIAMSON & WYATT, P.C.

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